IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

OP.No. 6771 of 2001(F)

PETITIONER:

SMT.ANNAMMA JOSEPH,
VANIPURAM HOUSE,
RAMAPURAM BAZAR P.O.,
KOTTAYAM. (DIED)

RETD. MAJOR VANIAPURA MATHEW JOSEPH,
VANIAPURAM HOUSE,
RAMAPURAM BAZAR P.O., KOTTAYAM.

(ORIGINAL PETITIONER DIED AND HER HUSBAND IS IMPLEADED AS PETITIONER VIDE JUDGMENT.)

BY ADV. SMT.K.LATHA

RESPONDENTS:
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1. TAHSILDAR(RR),
MEENACHIL.

2. SALES TAX OFFICER,
OFFICE OF THE SALES TAX,
IIND CIRCLE,
TRIPUNITHURA AT VYTTILA.

3. STATE OF KERALA REP. BY
CHIEF SECRETARY TO GOVERNMENT,
GOVT. OF KERALA, SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.11171/2001 IN O.P. NO.6771/2001

DISMISSED:

9.2.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF NOTICE U/S.17(3) OF THE KGST ACT DT.6.9.1997.

P2: TRUE COPY OF INVOICES AND LIST THEREON.

P3:TRUE COPY OF LETTER DT.19.8.97 SENT BY THIS PETITIONER TO R2.

P4: TRUE COPY OF DEMAND NOTICE ISSUED BY R1 TO PETITIONER WITH THE SIGNING DATE ON 10.1.2001.

P5: TRUE COPY OF LETTER DT.19.1.2001 SENT BY THE PETITIONER TO 1ST AND 2ND RESPONDENTS.

P6: TRUE COPY OF ACKNOWLEDGEMENT RECEIVED BY R1 & R2.

P7: TRUE COPY OF R.R. NOTICE DT.12.2.2001.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.6771 of 2001

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Dated this the 9th day of February, 2007.

JUDGMENT

At the request of the counsel who filed O.P. for petitioner, petitioner's death is recorded and her husband Mathew Joseph is impleaded as petitioner in the O.P. The petitioner is challenging recovery proceedings for recovery of arrears of tax due from a firm of which his deceased wife was a partner. The petitioner has produced only the pre-assessment notice and not the assessment which would have been issued prior to initiating revenue recovery proceedings. Question raised is only with regard to turnover assessed. It is clear from Ext.P1 that petitioner has disclosed turnover through a return filed before the Assessing Officer and balance is turnover estimated by the officer on account of probable omissions. The assessment has to be challenged only in an appeal and not before this court in writ proceeding. However, since O.P. is pending for long and since assessee-partner died, I feel petitioner's case calls for consideration by the Assessing Officer himself. In the circumstances, the O.P. is disposed of with direction to second respondent to give an opportunity to the petitioner for hearing and for production of records on behalf of his deceased wife and thereafter pass

fresh assessment order for the period 1995-96, if petitioner approaches the officer with details within two months from now. The fresh assessment to be completed within one month thereafter will substitute the order already issued and if petitioner has any grievance thereafter, it is for the petitioner to file statutory appeal against the same. If petitioner does not co-operate, recovery will be continued against assets of partners dead or alive after three months. Notice should be issued to other partners also.

C.N.RAMACHANDRAN NAIR
Judge

pms